STATE OF MICHIGAN

COURT OF APPEALS

JON BOEHMER and JOYCE BOEHMER,

Plaintiffs-Appellants,

v

NORTH BRANCH FOOD LOCKERS, INC.,

Defendant-Appellee,

and

GLENN GERWOLDS,

Defendant.

UNPUBLISHED
June 23, 2005

No. 260945
Lapeer Circuit Court
LC No. 03-033359-NO

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition and dismissing their case in its entirety. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Jon Boehmer brought a steer to defendant's facility for processing. A heifer belonging to another customer, defendant Glenn Gerwolds, began running loose in a fenced area on defendant's premises. Several persons, including Jon Boehmer, entered the fenced area in an attempt to bring the heifer under control. The animal charged and struck Jon Boehmer, causing him to sustain serious injuries.

Plaintiffs alleged premises liability against defendant, i.e., that defendant negligently failed to maintain its premises in a reasonably safe condition and to warn of the unsafe conditions, negligence against Gerwolds, i.e., that Gerwolds failed to maintain control of the

heifer, and gross negligence against defendant and Gerwolds, i.e., that North Branch's failure to train its employees to deal with such a situation and Gerwolds' failure to maintain control of the animal constituted conduct so reckless that it demonstrated a substantial lack of concern for whether an injury would result. Joyce Boehmer asserted a claim for loss of consortium.[1] Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it owed no duty to Jon Boehmer because the condition on the land, i.e., the loose animal, was open and obvious. The trial court granted the motion, finding that the condition was open and obvious, and that Jon Boehmer was aware of the dangers associated with dealing with a loose cow.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. PREMISES LIABILITY

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993).

The trial court granted defendant's motion for summary disposition on the ground that the condition on the land, i.e., the loose animal, was open and obvious. To support a premises liability claim, a plaintiff must assert that he was injured due to the existence of a dangerous condition on the land, and not due to an activity conducted on the land. *James v Alberts*, 464 Mich 12, 18; 626 NW2d 158 (2001). Plaintiffs' premises liability claim was based on the assertion that defendant negligently handled the loose animal. The loose animal was not a condition on the land, rather it was an activity conducted on the land. Plaintiffs did not assert a proper premises liability claim; thus, the trial court properly granted summary disposition of that claim, albeit for the wrong reason. *Id*.[2]

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[1] Gerwolds was dismissed from the case with prejudice after discovery revealed that he had turned over possession of his heifer to defendant by the time the accident occurred.

[2] If we conclude that the trial court reached the correct result, we will affirm that decision, even if we do so under alternative reasoning. *Messenger v Ingham County Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998).

We reverse that portion of the trial court's order granting summary disposition of plaintiffs' claims of negligence and gross negligence because the trial court failed to consider these issues. We remand this case to the trial court for consideration of those claims.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello